IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4652 OF 2007

Laxman Narayan Kanerkar ....Petitioner
V/s
Suresh Sakharam Kanerkar & Ors..... ....Respondents.

Mr.S.S.Shah, Adv. For the petitioner.

Ms.P.D.Tendulkar with Mr.Pradip Sawant, Adv. For R.Nos. 1 to 4.

CORAM: A.P.DESHPANDE, J.
27/8/07

PC:

Rule. Rule made returnable forthwith.

Taken up for final hearing by consent of the parties.

The present petitioner is the original plaintiff who instituted a suit for perpetual injunction seeking to restrain the defendants from disturbing possession of the plaintiff. According to the defendants the defendants are the co-tenants along with the plaintiff in the suit property. The Civil Court has referred the issue to the Revenue Authority under section 85A of the Bombay Tenancy & Agricultural Lands Act (the "Act"). The Tahsildar has held that the defendants are not co-tenants. However in an appeal carried before the Sub Divisional Officer the Sub Divisional Officer accepting the contention of the defendants has proceeded to hold that the defendants are co-tenant. Aggrieved by decision of the Sub Divisional Officer present petitioner has filed revision before the Commissioner which is pending. In the pending revision application a stay petition was filed and the rejection of the stay petition has given rise to the present writ petition.

2. According to the learned counsel for the petitioner if the Civil Court proceeds to take up suit for adjudication prior to the decision of revision petitioner is bound to suffer as the finding of the Sub Divisional Officer would be acted upon despite pendency of revision wherein the challenge to the said order is subjudise. In this fact situation limited prayer is made that the Civil Court ought not to proceed further till decision of the revision by the Commissioner. The prayer made is just and reasonable. Learned counsel for the petitioner has submitted that the petitioner is in exclusive possession of the property which fact has been disputed by learned counsel for the defendants. I do not propose to enter into the said controversy as to which of the party is in possession of the suit property. However ends of justice would be made by directing the Civil Court not to proceed with adjudication of the suit till decision of the revision and till the decision of revision parties need to maintain status quo in regard to possession. Hence the trial Court shall not proceed to decide the civil suit bearing No.24/1980 till the decision of revision pending on the file of Commissioner. Thus proceedings on the file of the Civil Court shall stand stayed till the decision of revision. Parties are directed to maintain status quo in regard to possession. Writ petition stands disposed of in above terms. Rule made absolute.

27.8.07